states. See id.[62] The Commission found that these systems provide "nondiscriminatory access to [Verizon's] billing functions" by providing "competing carriers with [Daily Usage Files] in substantially the same time and manner that Verizon provides such information to itself, and carrier bills in a manner that gives competing carriers a meaningful opportunity to compete." Massachusetts Order ¶¶ 97-98. Moreover, as the Commission has noted, "KPMG found Verizon's billing system to be accurate and reliable" in Massachusetts, id. ¶ 98, and, because Rhode Island uses the Massachusetts billing systems, that conclusion applies here as well, see McLean/Wierzbicki Decl. ¶ 102.

The Massachusetts and Rhode Island billing systems, like those in New York, have long made available to CLECs electronic carrier bills in the Billing Output Specification ("BOS") Bill Data Tape ("BDT") format. See McLean/Wierzbicki Decl. ¶¶ 105, 109. Accordingly, the billing systems here raise none of the same issues that arose in connection with Verizon's application in Pennsylvania. Indeed, during the course of the Pennsylvania proceedings, numerous CLECs acknowledged that the billing systems in Massachusetts, which are the same ones used in Rhode Island, provided them with timely and accurate bills, including electronic BOS-BDT bills. See, e.g., Z-Tel Reply Comments at 6, CC Docket No. 01-138 (FCC filed Aug. 6, 2001) ("Verizon knows how to make a billing system work, as evidenced by its performance in Massachusetts and New York."); CompTel Comments at 9, CC Docket No. 01-138 (FCC filed July 11, 2001) (noting that alleged problems with billing systems in Pennsylvania did not exist in New York

[62] Verizon's billing systems are currently producing more than 2,300 wholesale bills per month in New England on the Customer Record Information System ("CRIS") (used for billing resale services and unbundled loops) and the Carrier Access Billing System ("CABS") (used for billing other unbundled network elements). See McLean/Wierzbicki Decl. ¶ 105. Verizon also produces an average of more than 77 million call records (i.e., Exchange Message Interface ("EMI") records) each month in New England, which is more than 60 percent higher than the monthly average in 2000. See id. ¶ 103.

and Massachusetts, where "Verizon . . . currently has[] a functioning electronic billing system in place"); WorldCom Reply Comments, Lichtenberg Reply Decl. at 6, CC Docket No. 01-138 (FCC filed Aug. 6, , 2001) ("In contrast [to Pennsylvania], in other states, including New York, WorldCom received auditable electronic bills from the time it initially entered the local residential market."); McLean/Wierzbicki Decl. ¶ 110. Moreover, no CLECs complained about the quality of their BOS-BDT bills in the section 271 proceedings in Rhode Island. See McLean/Wierzbicki Decl. ¶ 110.

The performance data in Rhode Island demonstrate that Verizon continues to deliver timely and accurate bills to CLECs.[63] For example, from July through September 2001, Verizon consistently exceeded the 95-percent on-time standard for providing customer-usage data and the 98-percent on-time standard for providing wholesale bills to competing carriers in Rhode Island. See McLean/Wierzbicki Decl. ¶ 106; see also New York Order ¶ 227 & n.724 (relying on comparable performance under this measurement). Verizon also had very few billing adjustments for CLECs in August and September, which demonstrates that it provides accurate bills to CLECs. See McLean/Wierzbicki Decl. ¶ 107.[64]

Based on this record of strong performance, the Rhode Island PUC found during the state section 271 proceeding that Verizon's billing systems satisfy the checklist. See November 15th

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[63] In Rhode Island, KPMG also conducted a stand-alone test of Verizon's line-loss reports, which identify for CLECs the end-user lines that have migrated from one local service provider to another. See McLean/Wierzbicki Decl. ¶ 114. KPMG confirmed that Verizon's line-loss reports are accurate. KPMG RI Report at 93-94. Indeed, the number of telephone numbers reported by CLECs as either inaccurate in the line-loss reports or missing from those reports averaged less than 1 percent in 2001. See McLean/Wierzbicki Decl. ¶ 113; see also Pennsylvania Order ¶ 52 (finding that Verizon satisfies the checklist where the percentage of working telephone numbers reported as missing or incorrect averaged less than 1 percent).

[64] In July, the billing adjustments were higher because Verizon issued adjustments to two CLECs for UNE loop rates, which covered several months. See McLean/Wierzbicki Decl. ¶ 107.

Open Meeting at 42-43. The only concern expressed by the PUC related to the speed with which Verizon was implementing rate-level changes in its billing systems. See id. at 43-47. To satisfy the PUC's concerns, Verizon has adopted revised procedures for implementing rate changes, which the PUC has described as "a very good development." Id. at 45. Under these new procedures, Verizon will implement rate-level changes in its billing systems within 60 days of receiving a written order from the PUC, and will pay interest on any overcharges to CLECs in the event that any PUC-ordered rate reductions are delayed. See McLean/Wierzbicki Decl. ¶ 111.[65] Verizon also will provide notice to CLECs of such changes through the Change Management Process. See id.[66]

Finally, the PUC has adopted new performance measurements to ensure that performance remains strong going forward. In particular, the PUC has required Verizon to implement two billing measurements in use in Pennsylvania that report on the timeliness of Verizon's acknowledgement and resolution of billing claims. See Guerard/Canny/Abesamis Decl. ¶¶ 13, 72-73; Pennsylvania Order ¶ 41 & nn.157-58. The PUC also has ordered Verizon to include these measurements as a stand-alone provision in the Rhode Island Performance Assurance Plan, with remedy payments equal to 3 percent of Verizon's net return in Rhode Island, or one-thirteenth of the entire amount at risk under the Plan. See Guerard/Canny/Abesamis Decl. ¶¶ 80, 105.

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[65] Rate structure changes, which are more complex, take longer to complete. Verizon will propose appropriate implementation dates for such changes on a case-by-case basis. See McLean/Wierzbicki Decl. ¶ 111 & Att. 13.

[66] With respect to specific rates discussed by the Rhode Island PUC, see November 15th Open Meeting at 44, Verizon implemented the updated UNE rates for services billed in CABS on November 17, 2001, and updated UNE rates for services billed in CRIS will be implemented on November 30, 2001. See McLean/Wierzbicki Decl. ¶ 111.

6. Technical Support and Change Management.

Verizon provides CLECs in Rhode Island with the same support mechanisms and processes that it provides in Massachusetts, Pennsylvania, and New York. See McLean/Wierzbicki Decl. ¶ 115. In each of these states, the Commission found that Verizon satisfies the checklist. See Massachusetts Order ¶ 102; New York Order ¶ 101; Pennsylvania Order ¶¶ 12, 51. Moreover, KPMG has examined Verizon's procedures for establishing and maintaining relationships with CLECs and found it satisfactory in all respects. See McLean/Wierzbicki Decl. ¶ 116; KPMG MA Report at 495-629.

First, Verizon provides CLECs doing business in Rhode Island with the same extensive information, training, and assistance as it provides to CLECs in Massachusetts, Pennsylvania, and New York. See McLean/Wierzbicki Decl. ¶ 134. This includes handbooks, technical documentation that Verizon frequently updates and supplements, and numerous training sessions. See id. ¶¶ 134-137. In addition, Verizon offers CLECs in Rhode Island access to the same well-staffed Help Desk that is used by CLECs in Massachusetts, Pennsylvania, and New York, and that provides a single point of contact for a wide variety of problems that CLECs may encounter. See id. ¶ 141; see also Massachusetts Order ¶ 114 (finding that Verizon "provides the technical assistance and help desk support necessary to give competing carriers nondiscriminatory access to its OSS"); New York Order ¶ 127 (finding that Verizon's training and assistance "provides efficient competitors a meaningful opportunity to compete").

Second, Verizon has adopted the same Change Management Process in Rhode Island that it uses across the former Bell Atlantic footprint. See McLean/Wierzbicki Decl. ¶ 117; see also Massachusetts Order ¶¶ 102-113 (approving Verizon's Change Management Process); Pennsylvania Order ¶ 51 (same); New York Order ¶¶ 111-112 (same). As in those states, Verizon provides CLECs in Rhode Island "with timely change management notification and

documentation." New York Order ¶ 114; see Massachusetts Order ¶ 104. In fact, from July through September 2001, Verizon met the Change Management on-time standards for 100 percent of the change confirmations and notifications made during that period. See McLean/Wierzbicki Decl. ¶ 125; see also Massachusetts Order ¶ 105 (relying on comparable performance); New York Order ¶ 114 (same). In addition, KPMG has examined the Change Management Process and found it satisfactory in all respects. See McLean/Wierzbicki Decl. ¶ 125; KPMG MA Report at 503-05; Massachusetts Order ¶ 106.

Finally, Verizon provides CLECs in Rhode Island with the same testing environment offered to CLECs in Massachusetts, which allows all competing carriers to test the interaction of their systems and interfaces with Verizon's pre-ordering and ordering interfaces and OSS. See McLean/Wierzbicki Decl. ¶¶ 127-132; Massachusetts Order ¶ 109 (approving the same testing environment). Moreover, KPMG conducted an extensive review of the CLEC test environment and test procedures, and found that Verizon satisfies every test criterion. See McLean/Wierzbicki Decl. ¶ 133; KPMG MA Report at 526-39; Massachusetts Order ¶ 111 (relying in part on similar KPMG finding).

III. VERIZON IS FULLY IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 272.

As in Massachusetts, Pennsylvania, New York, and Connecticut, Verizon will provide all services that are subject to the requirements of section 272 through one or more separate affiliates (collectively, the "272 Affiliates") that comply fully with the requirements of that section and the Commission's rules.[67] The Commission found in each of those previously

[67] As required by the Act, the services that will be provided through the 272 Affiliates include any interLATA services originating in Rhode Island that are covered by section 272(a)(2)(B). Under section 271(j), private line and 800 services receive unique treatment for these purposes: any such services that terminate in Rhode Island are deemed to originate there, while such services that originate in Rhode Island are deemed to terminate there. As a result,

approved states that Verizon "demonstrated that it will comply with the requirements of section 272." New York Order ¶ 403; Massachusetts Order ¶ 227; Connecticut Order ¶ 73; Pennsylvania Order ¶ 124. That finding applies equally here.

A. Verizon's Separate Affiliates Comply Fully with the Structural and Transactional Requirements of Section 272(b).

Verizon's 272 Affiliates are operated as independent carriers and conduct business with Verizon (and all of its other local BOC affiliates) on an arm's-length basis. Accordingly, the 272 Affiliates comply with the five requirements of section 272(b): First, the 272 Affiliates will operate independently as required by section 272(b)(1); second, the 272 Affiliates will maintain separate books, records, and accounts; third, the 272 Affiliates will have separate officers, directors, and employees; fourth, the 272 Affiliates will not obtain credit under any arrangement that would permit a creditor to have recourse to the assets of Verizon; finally, Verizon will use the same practices to ensure that transactions between it and the 272 Affiliates will be conducted on an arm's-length basis, reduced to writing, and available for public inspection. See Browning RI Decl. ¶ 6; Browning PA Decl. ¶ 17 (App. M, Tab 1); New York Order ¶¶ 406, 408-414.[68]

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these types of services are subject to the requirements of sections 271 and 272 on the terminating (rather than the originating) end. While some have claimed that section 271(j) should be construed as an additional restriction, the plain language of that section makes clear that they are incorrect. In reality, section 271(j) reverses the normal presumption and treats the terminating end of 800 and private line services as the originating end — hence, the section 271(j) restriction applies only on the terminating end for these services.

[68] As explained below, Verizon also meets the requirements of section 272(c). See Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 17539, ¶ 170 (1996). Certain accounting and record-keeping services for each of Verizon's 272 Affiliates are performed by other affiliated centralized services companies that are not separated under section 272. See Browning RI Decl. ¶ 6; see also Browning PA Decl. ¶ 17e. The Commission has made clear, however, that such shared-service arrangements are permitted. See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, ¶¶ 168, 178-186 (1996).

B. Verizon Will Comply with the Nondiscrimination Safeguards of Section 272(c).

The Commission's finding in New York, Massachusetts, Connecticut, and Pennsylvania that Verizon "will comply with section 272(c)(1)" applies equally to Rhode Island. See New York Order ¶ 417; Massachusetts Order ¶ 228; Connecticut Order ¶ 73; Pennsylvania Order ¶ 124. Specifically, as in New York, Massachusetts, Connecticut, and Pennsylvania, Verizon will not discriminate between the 272 Affiliates and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards. See Browning RI Decl. ¶ 6; Browning PA Decl. ¶ 20.

For the same reason, the Commission's finding that Verizon has "demonstrate[d] that its BOCs account for all transactions with its section 272 affiliates in accordance with the accounting principles designated or approved by the Commission" also applies to Rhode Island. New York Order ¶ 415. As in New York, Massachusetts, Connecticut, and Pennsylvania, Verizon will account for any transactions with the 272 Affiliates as required by section 272(c)(2) and will fully comply with the Commission's cost allocation and affiliate transaction rules. See Browning RI Decl. ¶ 6; Browning PA Decl. ¶ 27.

C. Verizon Will Comply with the Audit Requirements of Section 272(d).

Verizon also "will comply with section 272(d), which requires an independent audit of a BOC's compliance with section 272 after receiving interLATA authorization." New York Order ¶ 416; Massachusetts Order ¶ 228; Connecticut Order ¶ 73 & n.187; Pennsylvania Order ¶ 124 & n.430. As in New York, Massachusetts, Connecticut, and Pennsylvania, Verizon has mechanisms in place for retaining independent auditors and making records available to verify compliance with the Commission's rules in order to comply with section 272(d). See Browning RI Decl. ¶ 6; Browning PA Decl. ¶ 34.

D. Verizon Will Fulfill All Requests in Accordance with Section 272(e).

Verizon will not discriminate in favor of its 272 Affiliates with respect to requests for telephone exchange and exchange access services. See New York Order ¶ 418; Massachusetts Order ¶ 229; Connecticut Order ¶ 73; Pennsylvania Order ¶ 124. *First*, Verizon will fulfill requests for telephone exchange and exchange access services from unaffiliated entities within the same time period in which Verizon fulfills such requests for its own retail operations. See 47 U.S.C. § 272(e)(1); Browning RI Decl. ¶ 6; Browning PA Decl. ¶ 21. *Second*, Verizon will not provide any facilities, services, or information concerning the provision of exchange access to its 272 Affiliates unless such facilities, services, or information are made available to other providers of interLATA service on the same terms and conditions. See 47 U.S.C. § 272(e)(2); Browning RI Decl. ¶ 6; Browning PA Decl. ¶ 22. *Third*, Verizon will charge its 272 Affiliates or impute to itself (if using access for the provision of permitted interLATA services of its own) an amount for telephone exchange and exchange access services that is no less than the amount charged to unaffiliated interexchange carriers for such service. See 47 U.S.C. § 272(e)(3); Browning RI Decl. ¶ 6; Browning PA Decl. ¶ 23. *Fourth*, Verizon will provide interLATA or intraLATA facilities or services to the 272 Affiliates only if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions. See 47 U.S.C. § 272(e)(4); Browning RI Decl. ¶ 6; Browning PA Decl. ¶ 24.

E. Verizon and Its Affiliates Will Comply with the Joint Marketing Provisions of Section 272(g).

As in New York, Massachusetts, Connecticut, and Pennsylvania, Verizon will comply with the requirements of section 272(g) in Rhode Island. See New York Order ¶¶ 419, 421; Massachusetts Order ¶ 228; Connecticut Order ¶ 73; Pennsylvania Order ¶ 124. Specifically, Verizon's 272 Affiliates will not market or sell local exchange service provided by Verizon

except to the extent that Verizon permits non-affiliated long distance carriers to do the same. See Browning RI Decl. ¶ 6; Browning PA Decl. ¶ 26. Moreover, Verizon will not market or sell interLATA service provided by its 272 Affiliates in an in-region state until Verizon has received authorization to provide such service in that state. See Browning PA Decl. ¶ 25.

Verizon plans to market its services jointly with those of its 272 Affiliates, as permitted by section 272(g)(3), see New York Order ¶ 419; AT&T Corp., 220 F.3d at 632, and to permit the sharing of Customer Proprietary Network Information ("CPNI") with its 272 Affiliates in accordance with 47 U.S.C. § 222 and the Commission's holdings that CPNI is not subject to section 272(c). See Browning RI Decl. ¶ 6; Browning PA Decl. ¶ 20m.[69]

F. Verizon's Compliance Program Will Ensure Satisfaction of Its Obligations Under Section 272.

Finally, the Commission found that Verizon had "demonstrate[d] that each affiliate has implemented internal control mechanisms to prevent, as well as detect and correct, any noncompliance with section 272." New York Order ¶ 405; see Massachusetts Order ¶ 228; Connecticut Order ¶ 73; Pennsylvania Order ¶ 124. Verizon will continue its compliance efforts, which are designed to ensure compliance with the requirements of section 272. See Browning RI Decl. ¶ 6; Browning PA Decl. ¶¶ 38-40. For example, Verizon has established an Affiliate

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[69] See also Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998) ("CPNI Order"); Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 (1999) ("CPNI Reconsideration Order"); see also Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Clarification Order and Second Further Notice of Proposed Rulemaking ¶ 25, CC Docket Nos. 96-115 & 96-149, FCC 01-247 (rel. Sept. 7, 2001) ("our finding . . . that the term 'information' in Section 272(c)(1) does not include CPNI remains intact," because Tenth Circuit vacated the CPNI Order on other grounds).

Transactions Compliance Office ("ATCO"), which centralizes the corporation's compliance efforts, reviews affiliate transactions, maintains Verizon's Affiliate Transactions Policy, and conducts employee training on section 272 compliance. See Browning RI Decl. ¶ 6; Browning PA Decl. ¶ 41.

IV. APPROVING VERIZON'S APPLICATION IS IN THE PUBLIC INTEREST.

The Commission has held that "compliance with the competitive checklist is, itself, a strong indicator that long distance entry is consistent with the public interest." New York Order ¶ 422. As described above, there is no question that the checklist is satisfied in Rhode Island. In addition, the Commission has explained that it "may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest." Id. ¶ 423. No such unusual circumstances exist here; to the contrary, the evidence is overwhelming that Verizon's entry into long distance in Rhode Island is in the public interest.

First, the local market in Rhode Island is unquestionably open and local competition is thriving. And, as Verizon's experiences in New York, Massachusetts, and Pennsylvania unambiguously demonstrate, Verizon's entry into the long distance market in Rhode Island will further promote local competition there.

Second, mechanisms are in place to ensure that the local market will remain open after Verizon's entry. The Rhode Island PUC has established TELRIC rates for unbundled network elements; Verizon reports its performance in Rhode Island under the same performance standards that the New York PSC established and that also are in effect in Massachusetts; and Verizon has comprehensive performance assurance plans in place that parallel the plans adopted in Massachusetts and New York.

Finally, Verizon's entry will greatly enhance long distance competition. Verizon's provision of long distance service in New York, Massachusetts, and Pennsylvania provides

empirical proof that Bell company entry into long distance leads to lower prices for long distance service as well.

A. Local Competition in Rhode Island Is Already Thriving, and Verizon's Entry Will Increase Local Competition Further Still.

Local markets in Rhode Island are unquestionably open to competition.[70] Throughout Rhode Island there is competition from all types of competitors using all three entry paths provided under the Act. See RI Local Comp. Rpt. ¶¶ 4-6 & Att. 1.

First, competitors have entered the local market in Rhode Island using all three entry paths provided under the Act, and facilities-based competition is particularly well-established. As noted above, facilities-based alternatives are more widely available in Rhode Island than in any other state in the country. Cox "has spent about $300 million in the past five years to upgrade its network in Rhode Island, replacing much of it with fiber optic cable."[71] Through its cable network, Cox makes local telephone service available to between 75 and 95 percent of all homes in Rhode Island, see RI Local Comp Rpt. ¶ 28, which it notes is "by far the highest percentage in the nation."[72] Other competitors in Rhode Island also have invested heavily in

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[70] Verizon disagrees as a legal matter that the Commission may conduct any analysis of local competition in its public-interest inquiry. Under the terms of the Act, the public-interest inquiry should focus on the market to be entered: the long distance market. The statute requires that "the requested authorization" be consistent with the public interest. 47 U.S.C. § 271(d)(3)(C). The "requested authorization" is to provide in-region, interLATA services. See id. § 271(b)(1). Therefore, the statute's public-interest focus is clearly on the long distance market, not the local market. This reading finds strong support in section 271(c)(2)(B), which sets forth an intricate competitive checklist, and section 271(d)(4), which states that "[t]he Commission may not . . . extend the terms used in the competitive checklist." It is implausible that Congress would have spent countless hours honing the checklist and would also have enjoined the Commission from improving or expanding upon it, but somehow would also have authorized the Commission to add further local competition-related requirements in the context of its public-interest review.

[71] Timothy C. Barmann, Rhode Island Wires for the Fiber-Optic Future, Providence J.-Bull., Nov. 26, 2000, at F1.

[72] Bicket, Commentary, supra note 1.

their own facilities. Competitors in the State have deployed at least seven local voice switches and hundreds of miles of local fiber, and have established approximately 200 collocation arrangements that give them access to more than 92 percent of Verizon's lines. See Lacouture/Ruesterholz Decl. ¶ 42; RI Local Comp. Rpt. ¶¶ 8-10.

Moreover, large numbers of Rhode Island consumers have actually switched to these competitive alternatives. As of September 2001, competitors in Rhode Island already served a very conservatively estimated 90,000 lines — including 39,000 residential lines — either wholly or partially over facilities they deployed themselves (including in all cases their own local switches). See RI Local Comp. Rpt. ¶¶ 4, 16-20. Given the small size of Rhode Island, this degree of competitive entry is proportionately even greater than in any of the other states that have received section 271 authority, at the time applications were filed in those states. See Brief Att. A, Exs. 3 & 4.

The fact that facilities-based competition is so well-established in Rhode Island is dispositive proof that local markets in the State are open. As Chairman Powell recently stated: "Facilities-based competition is the ultimate objective" of the Commission's competition policy.[73] Give that facilities-based competition in Rhode Island already is widespread means that this objective has already been met. As the DOJ has observed, the fact that competitors have "commit[ted] significant irreversible investments to the market (sunk costs) signals their

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[73] Michael K. Powell, Digital Broadband Migration — Part II at 4 (Oct. 23, 2001), at http://www.fcc.gov/Speeches/Powell/2001/spmkp109.pdf; see also Promotion of Competitive Networks in Local Telecommunications Markets, Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 12673, ¶ 4 (1999) ("in the long term, the most substantial benefits to consumers will be achieved through facilities-based competition"); UNE Remand Order ¶ 110 ("the construction of new local exchange networks" benefits consumers, the Commission has explained, because facilities-based carriers "can exercise greater control over their networks, thereby promoting the availability of new products that differentiate their services in terms of price and quality").

perception that the requisite cooperation from incumbents has been secured or that any future difficulties are manageable." Schwartz Aff. ¶ 174.

Second, competition in Rhode Island comes in all shapes and sizes and is being provided throughout the State. Rhode Island has attracted competition from a wide variety of CLECs, including two of the biggest CLECs in the country (AT&T and WorldCom), several smaller ones (e.g., Cox and Conversent), and resellers (e.g., CTC Communications and Lightyear Communications). See RI Local Comp. Rpt. ¶¶ 26-46. There are at least seven competitors providing facilities-based service to business customers in Rhode Island, and at least two competitors that use their own facilities to serve residential customers. See id. Broadband competition in Rhode Island also is strong. As Cox states, Rhode Island "leads the nation in terms of broadband telecommunications availability," as "[m]ore than 90 percent of Rhode Islanders have access to high-speed Internet service."[74]

Competing carriers in Rhode Island are serving both residential and business customers. As of September 2001, CLECs were serving approximately 45,000 residential customers in Rhode Island, approximately 90 percent of which were being served either wholly or partially over facilities they deployed themselves. See Lacouture/Ruesterholz Decl. ¶ 6; RI Local Comp. Rpt. ¶¶ 5, 19-20. Moreover, competitive entry in Rhode Island is taking place across the state. While competition is most intense in Providence and Newport, Cox is making facilities-based local service available to between 75 and 95 percent of Rhode Islanders. See RI Local Comp. Rpt. ¶¶ 6, 28.

Third, as actual experience in states with section 271 approval now unequivocally proves, granting Verizon long distance relief will prompt still further local competition. As the

[74] Bicket, Commentary, supra note 1.

Commission's own Local Telephone Competition report confirms, "[s]tates with long distance approval show [the] greatest competitive activity."[75] In fact, "CLEC market share in New York and Texas . . . are over 135% and 45% higher than the national average, respectively."[76]

This is hardly surprising: a Bell company's imminent or actual entry into the long distance market is the catalyst that finally forces long distance incumbents to enter local markets for mass-market customers. New York was the first state in which a Bell company received long distance relief, and it was the first state in which AT&T, WorldCom, and Sprint began extensively serving mass-market customers. Texas was the second state in which a Bell company received long distance relief, and it was the second state in which the long distance incumbents began extensively serving mass-market customers. And in both New York and Texas, the long distance incumbents responded to impending BOC entry by rolling out new, lower-priced bundles of local and long distance services that typically are marketed uniquely to customers in those states.

The long distance incumbents have made significant headway in marketing these bundles. In New York, for example, WorldCom has nearly 440,000 mass-market customers, and AT&T — which began providing service about six months after WorldCom — has more than 750,000 mass-market customers.[77] And more than 70 percent of the net growth in CLEC lines in

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[75] FCC News Release, Federal Communications Commission Releases Latest Data on Local Telephone Competition (May 21, 2001).

[76] Id.; see also Jerry A. Hausman, Effect of BOC Entry into InterLATA and IntraLATA Service in New York and Texas, at http://www.iacompetition.org/html/full_hausman.html ("BOC entry led to a large and statistically significant effect on CLEC shares for local residential service in New York and Texas").

[77] See New York PSC, Analysis of Local Exchange Competition in New York State at 17 (2001).

New York in 2000 resulted from CLECs serving increasing numbers of residential customers.[78] These mass-market customers are in addition to the literally hundreds of thousands of additional business lines served by AT&T and WorldCom over their own facilities.

Verizon's entry in New York has not only sparked increased competition from the long distance incumbents, but also has sparked added local competition across-the-board. In the first 21 months since Verizon's entry in New York, the number of local lines served by competitors there has increased by more than 125 percent, including a 345-percent increase in UNE-Platform lines and a 75-percent increase in facilities-based lines. See Brief Att. A, Ex. 8. There also has been a more than 300-percent increase in stand-alone loops and a more than 90-percent increase in interconnection trunks. See id. Similarly, in the first five months since Verizon's entry in Massachusetts, CLECs added more than 20,000 lines per month in that state. See Brief Att. A, Ex. 9. And, in Pennsylvania, CLECs have added nearly 24,000 lines per month since the Pennsylvania PUC endorsed Verizon's section 271 application in June 2001. See Brief Att. A, Ex. 10.

B. Local Markets in Rhode Island Will Remain Open After Verizon Obtains Section 271 Approval.

Even apart from the marketplace realities demonstrating that the local market not only is open, but irreversibly so, there simply is no realistic risk that Verizon could close the local market or deter further entry. For one thing, Verizon's compliance has been, and will continue to be, closely scrutinized by both competitors and state and federal regulators. For another thing, Verizon is subject to comprehensive performance reporting and performance assurance plans that put a substantial amount of remedy payments at risk annually.

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[78] See id. at 3-4.

1. The Regulatory Framework in Rhode Island Strongly Favors Competition.

As in New York, Massachusetts, and Pennsylvania, the process of opening local markets began in Rhode Island even before the Act was enacted, and has continued since.

Most significant here, the Rhode Island PUC has conducted extensive proceedings to evaluate Verizon's compliance with the competitive checklist. In fact, about five months ago, in July 2001, the PUC opened a docket specifically devoted to evaluating Verizon's compliance with the checklist: Docket No. 3363. Since that time, the PUC has intensively analyzed every aspect of Verizon's checklist compliance down to the most minute detail, all with constant input from competing carriers. The formal record in Docket No. 3363 includes more than 50 submissions totaling thousands of pages from Verizon and five other principal parties. See App. B, Tabs 1-24. Verizon also has responded to more than 175 interrogatory requests, questions, and data requests from the PUC staff and CLECs. See App. B, Tabs 3-5, 8-9, 15-18, 23. There have been five days of hearings, filling more than 1,000 pages of transcript. See App. B, Tabs 10-14. This process only recently concluded with hearings involving all interested parties, and the Rhode Island PUC has indicated that, based on this exhaustive record, it will recommend to this Commission that it approve Verizon's Application to provide long distance service in Rhode Island.

Of course, the PUC's efforts have not been limited to its section 271 proceeding. Before it established a proceeding to evaluate Verizon's compliance with the checklist, the Rhode Island PUC conducted additional proceedings to foster local competition and to implement the requirements of the 1996 Act. In particular, the PUC has conducted an "active review and modification of [Verizon's] proposed unbundled network element prices" and has demonstrated its "commitment to TELRIC-based rates." New York Order ¶ 238; Massachusetts Order ¶ 27.

The Rhode Island PUC has set rates for UNEs through its proceedings in Total Element

Long Run Incremental Cost — Final Rates for Verizon-Rhode Island, Docket No. 2681. See Cupelo/Garzillo/Anglin Decl. ¶ 14. This proceeding involved a "comprehensive investigation of the cost studies filed in this case in order to thoroughly examine their compliance with the FCC's TELRIC methodology." See Review of Bell Atlantic — Rhode Island TELRIC Study, Docket No. 2681, at 4 (RI PUC Nov. 18, 2001) ("RI TELRIC Order") (App. F, Tab 34). As the PUC has explained, the parties in this proceeding "engaged in substantial discovery addressing all aspects of the cost models proposed by Verizon and AT&T"; were given the opportunity to participate in "14 days of duly noticed public hearings in this matter"; were "afforded an opportunity to cross-examine each other's witnesses at the hearings"; and were permitted to provide "written responses to a substantial number of record requests relating to issues raised in the course of the hearings." Id. In addition, the Commission held a series of "open meetings" at which it "considered the evidence presented on a variety of issues in this docket, and resolved certain issues on an interim basis and others on a final basis." Id. at 4-5. Moreover, "[a]s a result of these open meetings and the record in this proceeding," the Commission issued a series of written orders in this docket. Id. at 5.

As demonstrated below, the outcome of the PUC's pricing proceedings is entirely consistent with the Act and Commission precedent.

a. In Phase I of Docket No. 2681, the PUC Established TELRIC Rates for all UNEs specified in this Commission's Local Competition Order.

The pricing proceedings in Docket No. 2681 were conducted in two phases. The first phase was intended to establish rates for the unbundled network elements specified in the Commission's Local Competition Order. See Cupelo/Garzillo/Anglin Decl. ¶ 15.[79] This phase

[79] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (1996) ("Local Competition Order").

began in November 1997, when Verizon submitted cost studies for these elements. See id. As noted above, these cost studies were subject to an exhaustive review, during which competing carriers were given the opportunity to file briefs, to present direct and rebuttal testimony, to conduct extensive discovery on the Verizon cost studies, and to file cost studies of their own. See id. ¶¶ 16-23; see also RI TELRIC Order at 4-5.

In July 1999, the Rhode Island Division of Public Utilities and Carriers proposed new rates for unbundled network elements. See Cupelo/Garzillo/Anglin Decl. ¶ 24; Joint Stipulation of Bell Atlantic – Rhode Island and the Rhode Island Division of Public Utilities Regarding Interim Recurring and Non-Recurring Charges, Docket No. 2681 (RI PUC July 15, 1999) ("Division Pricing Proposal") (App. F, Tab 19). Although these new rates were below the levels proposed in Verizon's initial cost studies, Verizon agreed to support the rates. See Cupelo/Garzillo/Anglin Decl. ¶ 24. Shortly thereafter, the Rhode Island PUC adopted the Division's proposal as interim rates, stating that "[i]n the absence of any meaningful opposition . . . the proposed interim rates would facilitate the development of local exchange competition in Rhode Island." Total Element Long Run Incremental Cost - Interim Rates for Bell Atlantic - Rhode Island, Docket No. 2681, Order at 2 (RI PUC Sept. 23, 1999) (App. F, Tab 20). The PUC also held that "[a]doption of interim rates will not delay the setting of permanent, cost-based rates for the provisioning of unbundled network elements." Id. In an Open Meeting held on April 11, 2001 — which was memorialized in an order issued on May 18, 2001 — the PUC required the interim rates in the Joint Stipulation be reduced by 7.11 percent, "to reflect the economic efficiencies that have resulted from mergers and process re-engineering." Total Element Long Run Incremental Cost - Final Rates for Verizon-Rhode Island, Order at 1, Docket No. 2681 (RI PUC May 18, 2001) ("May 18, 2001 Order") (App. F, Tab 27). The PUC then

ordered that these newly reduced interim rates be made permanent. See id. at 2. Three days later, on May 21, 2001, Verizon filed new rates consistent with the PUC's ruling. See App. F, Tab 28; RI TELRIC Order at 73-74 & n.32.

On November 15, 2001, the PUC held an Open Meeting at which it "approved the compliance rates filed by Verizon on May 21, 2001 as consistent with the Commission's April 11, 2001 open meeting decision and the requirements of TELRIC as prescribed by the 1996 Act and the Local Competition Order." RI TELRIC Order at 74. On November 19, 2001, the PUC released a comprehensive 75-page order that "details the Commission's findings in approving the resulting rates as final TELRIC rates, and explains the Commission's determination that this course of action will result in rates for UNEs in Rhode Island that are . . . consistent with the FCC's TELRIC methodology and, therefore, will facilitate the development of local telephone exchange competition in Rhode Island." Id. at 5.

In making this determination, the PUC stated that "the interim recurring charges made permanent in that order were nearly identical to the recurring charges that had been recommended as final rates by the Division," and that the Division itself "has concluded that the resulting rates are consistent with TELRIC." Id. at 73-74. The PUC also found "that the Division's recommendation is reasonable and its conclusions that these rates are consistent with TELRIC is supported by substantial evidence in the record of this proceeding." Id. at 74. Moreover, the PUC explained in great detail how each of the assumptions used in establishing Verizon's final rates were consistent with TELRIC principles. For example, as described in more detail in the Cupelo/Garzillo/Anglin Declaration, the PUC found that its assumptions and factual findings regarding the use of fiber feeder, fill factors, switching discounts, depreciation

lives, and cost of capital were all consistent with what this Commission has found TELRIC-compliant in the past. See Cupelo/Garzillo/Anglin Decl. ¶¶ 41-50.

b. In Phase II of Docket No. 2681, the PUC Established TELRIC Rates for all UNEs Specified in this Commission's UNE Remand Order.

The second phase of Docket No. 2681 was opened to establish rates for the additional network elements that Verizon was required to provide pursuant to the UNE Remand Order. See Cupelo/Garzillo/Anglin Decl. ¶ 32. This phase began in September 2000, after Verizon filed an initial cost study relating to the new unbundled network elements specified by that order. See id. In May 2001, Verizon revised its costs studies to incorporate the determination of the PUC in Phase I of the Rhode Island pricing proceeding that Verizon's rates should be reduced "to reflect the economic efficiencies that have resulted from mergers and process re-engineering." May 18, 2001 Order at 1. As was the case with Phase I of the pricing proceedings, the rates proposed in Phase II of the proceedings were subject to an extensive review. See Cupelo/Garzillo/Anglin Decl. ¶ 34. Based on this review, the PUC in its November 15, 2001 Open Meeting ruled that the rates established in the Phase II proceedings are "TELRIC compliant." November 15th Open Meeting at 10-11.

c. In Docket No. 3363, the PUC Established TELRIC Rates for Unbundled Switching.

The PUC also has evaluated Verizon's wholesale rates — and in particular its rates for unbundled local switching — in the context of reviewing Verizon's section 271 compliance filing in Docket No. 3363. On October 5, 2001, Verizon made a supplemental filing in that proceeding in which it voluntarily agreed to reduce its rates for unbundled local switching in Rhode Island. See Cupelo/Garzillo/Anglin Decl. ¶¶ 37-38 & Att. 1. Although Verizon believed that its previous rates complied fully with the FCC's rules, Verizon offered to reduce its switching rates in order to ensure that they did not become an issue in reviewing Verizon's long

distance application. See Cupelo/Garzillo/Anglin Decl. ¶ 38. Verizon proposed to reduce its rates in Rhode Island to the levels contained in Verizon's proposed switching rates in Massachusetts, based on updated TELRIC cost studies. See id. As demonstrated in the Cupelo/Garzillo/Anglin Declaration, these rates are considerably lower than Verizon's previous switching rates, and are lower than the rates that were in effect when the FCC approved Verizon's section 271 applications in Massachusetts, New York, and Connecticut. See id. ¶¶ 38, 54-55.

In its November 15, 2001 Open Meeting, the PUC found that Verizon's proposed new switching rates are TELRIC-compliant. As the PUC's own legal counsel pointed out, these new rates "are lower than what Massachusetts was in April 2001," when the Commission approved Verizon's application in that state. November 15th Open Meeting at 40. Moreover, "even AT&T's own filing with [the PUC] notes that with these new rates . . . the UNE-P approach is lower than what Verizon-Rhode Island unlimited local calling area costs" and "certainly ample enough for anyone to come in here and compete." Id.

d. The Rhode Island Rates for Unbundled Network Elements Are Within the Range that a Reasonable Application of TELRIC Would Produce.

As described above, the Rhode Island PUC has found that Verizon's wholesale rates comply fully with the Act and the Commission's rules. Under the Commission's well-settled precedent, this should be the end of the inquiry. The Commission "will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if 'basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.'" Kansas/Oklahoma Order ¶ 59 (quoting New York Order ¶ 244). The evidence here demonstrates that neither of these two conditions is present here.

First, as described above, the Rhode Island PUC applied TELRIC principles in establishing Verizon's rates. With respect to the assumptions regarding each of the inputs used to establish Verizon's rates, the PUC conducted an extensive investigation, and in each instance applied principles that are consistent with what this Commission has found TELRIC-compliant in the past. See Cupelo/Garzillo/Anglin Decl. ¶¶ 42-50.

Second, the Commission has held that, in making a determination about whether rates in a particular state comply with TELRIC, it "may, in appropriate circumstances, consider rates that we have found to be based on TELRIC principles" in the context of previous section 271 applications. Kansas/Oklahoma Order ¶ 82. If the rates in the state under review are comparable to those in a state that previously was approved, especially where the two states being compared "are adjoining states," id., and have comparable cost structures, id. ¶¶ 83-84, the rates at issue are "entitled to a presumption of compliance with TELRIC," id. ¶ 82 n.244. Moreover, the Commission has held that it will apply this presumption even when "a state commission does not apply TELRIC or does so improperly." Pennsylvania Order ¶ 63; see also Arkansas/Missouri Order ¶ 56.

The factors for establishing a presumption of compliance are clearly present here: Rhode Island and Massachusetts are adjoining states; Verizon has similar rate structures for unbundled network elements in both states; and the FCC has already found — on two separate occasions — that Verizon's rates in Massachusetts are reasonable. See Cupelo/Garzillo/Anglin Decl. ¶ 55; New York Order ¶ 238; Massachusetts Order ¶ 20. Indeed, the presumption of TELRIC compliance should be especially strong here with respect to the rates for both loops and switching in Rhode Island.

The unbundled local loop rates in Rhode Island are entitled to a strong presumption of TELRIC compliance because these are *lower* than the rates that the Commission found TELRIC-compliant in Massachusetts and New York, even though the Commission's Universal Service Fund ("USF") cost model shows that the costs in Rhode Island are *higher* than the costs in those states. See Cupelo/Garzillo/Anglin Decl. ¶¶ 52-53; Kansas/Oklahoma Order ¶ 84 (the USF cost model "accurately reflects the relative cost differences among states"); Pennsylvania Order ¶ 65 ("[O]ur USF cost model provides a reasonable basis for comparing cost differences between states."). For example, the statewide approved rate in Rhode Island is approximately 8 percent lower than the statewide approved rate in Massachusetts and approximately 4 percent lower than the statewide approved rate in New York, even though the costs in Rhode Island are approximately 9 percent higher than the costs in Massachusetts and approximately 15 percent higher than the costs in New York. See Cupelo/Garzillo/Anglin Decl. ¶ 52. As the Commission has held, where, as here, "the percentage difference between the applicant state's rates and the benchmark state's rates does not exceed the percentage difference between the applicant state's costs and the benchmark state's cost, as predicted by the USF model, *then we will find that the applicant has met its burden to show that its rates are TELRIC-compliant.*" Pennsylvania Order ¶ 65 (emphasis added).

The Rhode Island switching rates are likewise entitled to a strong presumption of TELRIC compliance. The statewide weighted average local switching rate in Rhode Island is approximately 40 percent lower than the equivalent rate in Massachusetts and approximately 15 percent lower than the equivalent rate in New York, even though the costs in Rhode Island are approximately 13 percent higher than the costs in Massachusetts and approximately 7 percent

higher than the costs in New York. See Cupelo/Garzillo/Anglin Decl. ¶ 54.[80] Accordingly, "the percentage difference between the applicant state's rates and the benchmark state's rates does not exceed the percentage difference between the applicant state's costs and the benchmark state's cost." Pennsylvania Order ¶ 65. Verizon therefore has "met its burden to show that its rates are TELRIC-compliant." Id.

Despite all this, the long distance incumbents will likely rehash their argument that it is inappropriate to benchmark Verizon's Rhode Island rates against those in Massachusetts and New York, because the rates in those states are currently under review. As the Commission has repeatedly found, however, the fact that the rates in a "benchmark state" are under review is irrelevant to whether these rates can be used in a TELRIC-rate comparison. For example, in both the Massachusetts Order and the Pennsylvania Order, the Commission relied on a comparison of Verizon's rates in those states to the rates it approved in New York, even though the New York PSC already "had initiated a second UNE rate case." Massachusetts Order ¶ 33; see Pennsylvania Order ¶ 64. As the Commission held: "It would be unreasonable to preclude incumbent LECs from relying on appropriate rates that have been found to be TELRIC-compliant merely because these rates are under some form of challenge or review where there has not been a determination that those rates are not TELRIC-compliant." Massachusetts Order ¶ 31; see also id. ¶ 36 ("[T]he fact that a state may conduct a rate investigation and change the rates in the future does not cause an applicant to fail the checklist item at this time.").

Moreover, where rates in the benchmark state are under review, the Commission has taken additional comfort in the fact that the rates in the applicant state are likewise under review.

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[80] As Verizon explained during the course of its Massachusetts application, although the rate structures in New York and Massachusetts differ, Verizon's rates for unbundled local switching, transport, and analog line ports — when combined — are comparable in the two states.

See, e.g., id. ¶¶ 30, 33, 35-36 (noting in connection with rejecting complaints about Verizon's existing rates that the Massachusetts DTE had opened a proceeding to establish new rates); Pennsylvania Order ¶ 69 (noting in connection with rejecting complaints about Verizon's existing rates that the Pennsylvania PUC had opened a proceeding to establish new rates). In Rhode Island, the PUC has recently initiated a new pricing proceeding and ordered Verizon to "file new rates in this proceeding, based on fresh TELRIC cost studies using the Verizon recurring and nonrecurring cost models, as adjusted in accordance with the parameters and other applicable directives" that the PUC established in its recent TELRIC pricing order. RI TELRIC Order at 76. Verizon is required to file these new costs studies by May 1, 2002, or 30 days after Verizon receives section 271 approval in Rhode Island, whichever is earlier. See id.

2. Verizon Is Subject to Comprehensive Performance Reporting and Performance Assurance Mechanisms.

Verizon also is subject to extensive performance reporting requirements that, like the comparable requirements in New York, Massachusetts, and Connecticut, allow competitors and regulators alike to identify and investigate potential problems before they pose a risk to competition. And it also is subject to a comprehensive, self-executing performance assurance mechanism that provides still further incentives to provide the best wholesale performance possible.

Performance Measurements. Verizon reports its Rhode Island performance under an extensive set of measurements that are virtually identical to the measurements developed in the New York PSC's collaborative carrier working group process and approved by the New York PSC. See Guerard/Canny/Abesamis Decl. ¶ 13; New York Order ¶¶ 438-439. Those measurements also are substantially the same as those that were in effect in Massachusetts and Connecticut at the time the Commission approved Verizon's section 271 applications in those